

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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|----------------------------------|---|----------------------------------|
| Terrence Gymon Lemon, |) | C/A No. 0:16-2420-HMH-PJG |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | REPORT AND RECOMMENDATION |
| |) | |
| Donald Beckwith, <i>Warden</i> , |) | |
| |) | |
| Respondent. |) | |
| |) | |

The petitioner, Terrence Gymon Lemon, a state prisoner, brought this action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On August 19, 2016, the respondent filed a motion to dismiss pursuant to the Federal Rules of Civil Procedure. (ECF No. 6.) On September 7, 2016, the court issued an order advising the petitioner, who is represented by counsel, that it appeared to the court that he was not opposing the motion and wished to abandon this action, and giving the petitioner an additional seven days in which to file a response to the respondent's motion to dismiss. (ECF No. 10.) The petitioner was specifically warned that if he failed to respond, this action may be decided on the record presented in support of the respondent's motion, see Local Civil Rule 7.06 DSC, or may be recommended for dismissal with prejudice for failure to prosecute. See Davis v. Williams, 588 F.2d 69, 70 (4th Cir. 1978); Fed. R. Civ. P. 41(b). Despite this warning, the petitioner still did not respond.

Having reviewed the respondent's motion, the court agrees that the petitioner has not yet exhausted his state remedies as required by applicable law. See generally 28 U.S.C. § 2254(b). His petition is therefore premature. Accordingly, the court recommends that the instant petition be dismissed without prejudice.



Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

September 15, 2016
Columbia, South Carolina

The parties' attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).